

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
KNOLL, INC.,	:	
	:	04 CIV. 8800 (DLC)
Plaintiff,	:	ECF CASE
	:	
- v -	:	<u>REDACTED</u> STATEMENT OF
	:	UNCONTESTED FACTS IN
ARTHUR GORDON ASSOCIATES,	:	SUPPORT OF ARTHUR GORDON
<i>d/b/a</i> GORDON INTERNATIONAL,	:	ASSOCIATES' MOTION FOR
	:	SUMMARY JUDGMENT
Defendant.	:	<u>RE: LACHES</u>
-----X		
KNOLL, INC.,	:	
	:	
Plaintiff,	:	
	:	
- v -	:	04 CIV. 8801
	:	
PALAZZETTI EXPRESS, INC.,	:	
	:	
Defendant.	:	
-----X		
CASPRINI GRUPPO INDUSTRIALE S.p.A.,	:	
	:	
Plaintiff,	:	
	:	
- v -	:	04 CIV. 9787
	:	
KNOLL, INC.,	:	
	:	
Defendant.	:	
-----X		

The Civil Action

1. This is an action for alleged violations of Sections 32 and 43(a) of the Lanham Act 15 U.S.C. §§1114, 1125; for an alleged violation of Section 360-I of the New York General Business Law; and for an alleged violation of the common law of the State of New York pertaining to unfair competition. (Complaint ¶1).

2. This Court has jurisdiction over the subject matter of the claims in the above-styled civil action pursuant to 28 U.S.C. §1338 and under principles of supplemental jurisdiction, 28 U.S.C. §1367(a). (Complaint ¶2).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391. (Complaint ¶2).

Mies van der Rohe, the Barcelona Collection, and Knoll

4. Ludwig Mies van der Rohe ("Mies van der Rohe) was a world famous architect and one of the most influential architects of the twentieth century. (Complaint ¶10).

5. Mies van der Rohe designed the Barcelona chair, the Barcelona stool, the Barcelona couch, the Barcelona table, and the flat Brno chair (collectively referred to as the "Barcelona Collection"). (Complaint ¶¶14 – 19).

6. According to Plaintiff Knoll, Inc. (hereinafter "Knoll"), the design of the Barcelona chair, the Barcelona stool, and the Barcelona table "epitomizes Modern architecture" and the flat Brno chair is "an icon of 20th-century design." (Excerpts from Knoll's website, Bergsman Affidavit, **Exhibit 1**)

7. The furniture designed by Mies van der Rohe are some of the most important and well-known designs of the Twentieth century. (Gordon Affidavit ¶6).

8. The Brno chair and the Barcelona chair, in particular, were and are among the signature pieces of modern furniture. (Gordon Affidavit ¶6).

9. "By an agreement dating from November 1, 1965, Mies van der Rohe assigned all rights, title and interest in the design of the Barcelona Chair, the Barcelona Stool, the Barcelona

Couch, the Barcelona Table and the Flat Brno Chair. . . to predecessors of Knoll as to the rights herein involved." (Complaint ¶20).

10. **CONTAINS CONFIDENTIAL/RESTRICTED CONFIDENTIAL INFORMATION FILED UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER OF THIS COURT. TO BE OPENED ONLY BY OR AS ORDERED BY THE COURT OR BY STIPULATION OF THE PARTIES SUBJECT TO THE APPROVAL OF THE COURT.**

11. In a letter of April 25, 1968, addressed to Barrett Wayburn, President of Triangle Furniture Co., Inc., from Lester W. Clark from the law firm of Cooper, Dunham, Dearborn & Henniger, counsel for Knoll Associates, Inc., Knoll protested an advertisement that "purports to compare the Knoll 'BARCELONA' chair with some other chair, not identified as to manufacture, which you are offering at a considerably lower price." Knoll stated that the advertisement constituted unfair competition for the following reasons:

- (1) The two chairs appearing in the advertisement appear to be reproductions of the same photograph, except that the negative has been reversed in one of the photographs. The use of the same photograph to illustrate the cheap chair and the Knoll "BARCELONA" chair, thereby implying that the two chairs are of equal quality and appearance, constitutes unfair competition.
- (2) The use of the Knoll name and model identification without using any name for the manufacturer or model identification for the imitation constitutes unfair competition.
- (3) The presentation of the prices of the two chairs, where the cheap chair would appear to have an advantage, in large type, and the presentation of the comparison of the two chairs, where the Knoll chair would have the advantage, in a considerably smaller type also constitutes unfair competition.

Knoll insisted that Triangle Furniture Co., Inc. "drop immediately the practice of presenting such advertisements as this." (Knoll documents K024857-58, Bergsman Affidavit, **Exhibit 3**).

12. In a letter dated May 20, 1968, Barrett S. Wayburn, the President of Triangle Furniture Company, responded to the April 25, 1968 letter from Mr. Lester Clark of the law firm of Cooper, Dunham, Henniger & Clark. Triangle Furniture Company agreed to cooperate with Knoll. In addition, Mr. Wayburn enclosed a copy of an advertisement which ran in the *New York Times* the previous week. That advertisement was a company named Maurice Villency and it featured drawings of the Barcelona chair and the Barcelona table. (Knoll documents K024862 – 63, Bergsman Affidavit, **Exhibit 3**).

13. In a letter dated November 14, 1968, addressed to Maurice Villency, President of Maurice Villency, Inc., from R. Bradley Boal from the law firm of Cooper, Dunham, Henniger & Clark, counsel for Knoll, Knoll protested an advertisement appearing in the *New York Times* on April 28, 1968. Knoll described the advertisement as follows:

That advertisement shows two chairs and a table and bears the legend in bold type "now, the original BARCELONA chairs!" The chairs and table designated "BARCELONA" in the advertisement are clearly copies of those designed by Mies van der Rohe. The chairs sold by Maurice Villency are clearly not "original" Mies von (sic) der Rohe chairs at all.

Knoll stated that the advertisement constituted unfair competition for the following reasons:

1. The word "original" implies that the designated furniture is in fact that originally designed by Mies van der Rohe or is made under his auspices. Art Metal-Knoll Corporation is the only U.S. furniture manufacturer which has such an arrangement with Mies von (sic) der Rohe.
2. The word "BARCELONA" in the advertisement is used in a manner indicating that it is a trademark of Maurice

Villency. BARCELONA is not a trademark of Maurice Villency and is in fact the subject of U.S. Registration No. 772,313 of Art Metal-Knoll Corporation.

Knoll insisted that Maurice Villency, Inc. "immediately stop the practice of presenting such advertisements as this." (Knoll documents K024855 – 56, Bergsman Affidavit, **Exhibit 3**).

14. In a letter dated November 21, 1968, from Robert D. Villency, President of Maurice Villency, Inc. to R. Bradlee Boal of the law firm of Cooper, Dunham, Henniger & Clark, Maurice Villency, Inc. responded to Knoll's letter dated November 14, 1968. Maurice Villency, Inc. stated that it would discontinue using the word "original" and "have instead adopted the use of the wording suggested by the Federal Trade Commission 'authentic design'." Also, Maurice Villency, Inc. stated that it would discontinue using the word "Barcelona" in its advertising. (Knoll document K024867, Bergsman Affidavit, **Exhibit 3**).

15. In a letter dated November 22, 1968, from R. Bradley Boal from the law firm of Cooper, Dunham, Henniger & Clark, to Robert D. Villency, president of Maurice Villency, Inc., Knoll noted the discontinuance of the words "original" and "Barcelona" by Maurice Villency, Inc. Knoll advised Mr. Villency that it could not take any position about any modifications to the April 28, 1968 advertisement that Maurice Villency, Inc. was planning to publish in the future because it had not seen such advertisements. However, Knoll advised Mr. Villency of the following: "Knoll has acquired the exclusive right to use the Mies van der Rohe name in connection with furniture." (Knoll document K024868, Bergsman Affidavit, **Exhibit 3**).

16. In a letter dated October 3, 1968, Dr. Alan L. Gans complained to Knoll regarding an advertisement in the September 25, 1968 issue of the *New Haven Register*. The advertisement referenced in Dr. Gans' letter is from Smolen's Contemporary Interiors and it

features a drawing of a reproduction of the Barcelona chair under the words "now, the original BARCELONA, chair!". (Knoll documents K024267 – 68, Bergsman Affidavit, **Exhibit 3**).

17. In a letter dated November 25, 1968, Robert B. Cadwallader, Vice President of Marketing for Knoll responded to Dr. Gans' October 3, 1968 letter. Mr. Cadwallader stated the following:

The Barcelona chair was originally designed by Mies van der Rohe before 1930. ***The visual design as such, is in the public domain by this point in time.*** We have the exclusive rights from Mies van der Rohe to manufacture his design and to use his name in connection with them. We also have a Trademark on the word "Barcelona". I can assure you that there is not a week that passes that I do not get an ad similar to this from some part of the world, where someone is attempting to imitate the visual appearance of these chairs.

(Knoll document K024859, Bergsman Affidavit, **Exhibit 3**).

18. In a letter dated November 15, 1968, addressed to Smolen's Contemporary Interiors from R. Bradley Boal from the law firm of Cooper, Dunham, Henniger & Cooper representing Knoll, Knoll protested the Smolen's advertisement published in the September 25, 1968 issue of the *New Haven Register*. Knoll described the advertisement at issue as follows:

That advertisement shows a chair and bears the legend in bold type "now, the original BARCELONA chair! The chair designated "BARCELONA" in the advertisement is clearly a copy of those designed by Mies van der Rohe.

Knoll stated that the advertisement constituted unfair competition for the following reasons:

1. The word "original" implies that the designated furniture is in fact that originally designed by Mies van der Rohe or is made under his auspices. Art Metal-Knoll Corporation is the only U.S. furniture manufacturer which has such an arrangement with Mies van der Rohe.

2. The word "BARCELONA" in the advertisement is used in a manner indicating that it is a trademark of Smolen's. BARCELONA is not a trademark of Smolen's and is in fact the subject of U.S. Registration No. 772,313 of Art Metal-Knoll Corporation.

Knoll insisted that Smolen's "immediately stop the practice of presenting such advertisements as this." (Knoll documents K024860 – 61, Bergsman Affidavit, **Exhibit 3**).

19. In a letter dated November 15, 1968, addressed to Mr. Myer Alpert, president of M. L. Alpert Co., Inc., from R. Bradley Boal from the law firm of Cooper, Dunham, Henniger & Cooper representing Knoll, Knoll protested an advertisement published by M. L. Alpert Co., Inc. Knoll described the advertisement at issue as follows:

That advertisement shows two chairs and a table and bears the legend in bold type "THE ORIGINAL BARCELONA CHAIRS". The advertisement also refers to "the original GLASS and STAINLESS STEEL TABLES". The chairs and tables designated "BARCELONA" in the advertisement are clearly copies of those designed by Mies von (sic) der Rohe.

Knoll stated that the advertisement constituted unfair competition for the following reasons:

1. The word "original" implies that the designated furniture is in fact that originally designed by Mies van der Rohe or is made under his auspices. Art Metal-Knoll Corporation is the only U.S. furniture manufacturer which has such an arrangement with Mies van der Rohe.
2. The word "BARCELONA" in the advertisement is used in a manner indicating that it is a trademark of Alpert. BARCELONA is not a trademark of Alpert and is in fact the subject of U.S. Registration No. 772,313 of Art Metal-Knoll Corporation.

Knoll insisted that M. L. Alpert Co., Inc. "immediately stop the practice of presenting such advertisements as this." (Knoll documents K024853 – 54, Bergsman Affidavit, **Exhibit 3**).

20. The unfair competition issues involving Triangle Furniture Company, Maurice Villency, Inc., and M. L. Alpert Co., Inc., as well as the issue raised by Dr. Alan L. Gans, were the subjects of discussion between counsel and Knoll's management, including Robert B. Cadwallader, Vice President of Marketing, and Donald R. Jomo, Treasurer. (Knoll's privilege log, Bergsman Affidavit, **Exhibit4**).

21. In a letter dated November 22, 1968, addressed to Bullock's Magnin Company, from R. Bradley Boal from the law firm of Cooper, Dunham, Henniger & Cooper representing Knoll, Knoll protested a Bullock's Magnin Company advertisement that appeared in the September 29, 1968 issue of the *Los Angeles Times*. Knoll described the advertisement at issue as follows:

That advertisement showed a chair and the accompanying copy stated that it was inspired by Mies van der Rohe. The chair is clearly a copy of that designed by Mies van der Rohe.

Knoll stated that the advertisement constituted unfair competition for the following reason:

Specifically it is our view that it is unfair competition in that the advertisement implies that the designated chair is in fact that originally designed by Mies van der Rohe or is made under his auspices. Art Metal-Knoll Corporation is the only U.S. furniture manufacturer which has the right to use the name Mies van der Rohe in association with such furniture.

Knoll insisted that Bullock's Magnin Company "immediately stop the practice of presenting such advertisements as this." (Knoll document K024869, Bergsman Affidavit **Exhibit 3**).

22. In a February 24, 1970 internal Knoll memorandum from Roger Carney to Larry Ryan concerning a "Mies ad by Alpert's", the subject was an advertisement by Alpert featuring a drawing of a reproduction of a Barcelona chair with the following copy: "The authentic original BARCELONA chair. . . " Mr. Carney stated the following: "In any event it just isn't an

authentic original. In the past we have had our attorney write to such plagiarizing firms. I suggest we continue same." (Knoll documents K024864 – 66, Bergsman Affidavit, **Exhibit 3**).

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25. In correspondence dated February 27, 1990 to Mr. Stuart Wrede, Director of the Department of Architecture & Design at The Museum of Modern Art, Donald M. Rorke, the Executive Vice President of Design at Knoll, wrote to propose "means of expanding public and industry awareness of our relationship with the Museum and exclusive rights to the Mies Archives Reproductions." Mr. Rorke explained that Knoll's purpose in taking these steps is to "differentiate our Mies Collection from the numerous copies sold at lower price levels and without restriction, by companies having no royalty obligations." The steps proposed by Knoll included, *inter alia*, stamping, burning, or embossing the names of Mies van der Rohe, The Museum of Modern Art, and Knoll International into the leather upholstery or steel frame of each piece of furniture in the "Archive Collection". (Knoll's document No. 707384, Bergsman Affidavit, **Exhibit 2**)

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Arthur Gordon Associates

27. Arthur Gordon founded Arthur Gordon Associates in 1968. Arthur Gordon Associate has always been located at 200 Lexington Avenue in New York City. Arthur Gordon Associates is in the business of selling "contract" furniture. Contract furniture is office furniture and furniture used in schools, institutions, hotels, motels, and buildings, as opposed to residential furniture. (Gordon Affidavit ¶3).

28. Many of the classic Twentieth Century furniture designs, including all of the furniture designed by Mies van der Rohe (e.g., the Barcelona chair, the Barcelona stool, the Barcelona Couch, the Barcelona table, and the flat Brno chair) were never protected by United States patents or copyrights. (Gordon Affidavit ¶4).

29. Arthur Gordon Associates began selling the flat Brno chair in the late 1970's. (Gordon Affidavit ¶7).

30. Arthur Gordon Associates began selling the Barcelona chair and ottoman in 1980. (Gordon Affidavit ¶8)

31. Arthur Gordon Associates has been continuously selling furniture designed by Mies van der Rohe, including the Brno chair, and the Barcelona chair, ottoman, couch and table, since 1980. (Gordon Affidavit ¶10 and **Exhibits 1 and 2**).

32. Arthur Gordon Associates markets its products, including the Barcelona Collection, primarily through independent manufacturer's representatives. These agents call on architect and designers who specify furniture for their projects and promote the furniture line

offered by Arthur Gordon Associates. The manufacturer's representatives make sales calls on building and design project managers and contract furniture dealers. (Spalding Affidavit ¶6).

33. Arthur Gordon Associates sells its products, including the Barcelona Collection, primarily to contract furniture dealers and designers. Occasionally, it sells directly to the end-user such as a hotel, school, business, or other institution. (Spalding Affidavit ¶7).

34. Arthur Gordon has exhibited its products, including the Brno chair and the Barcelona chair, ottoman, couch and table, at the following trade shows:

- a. GlobalShop (1989 to the present) - an annual national store planning and design show;
- b. NeoCon Chicago (late 1970's the present with the exception of 1990-94) – an annual contract furniture show in the Chicago Merchandise Mart;
- c. NeoCon West (1997 to 2002) – an annual contract furniture show in Los Angeles;
- d. NeoCon South (2000 to 2002) – an annual contract furniture show in Florida or Georgia;
- e. HDExpo (2001 to the present) – a national hospitality design show in Las Vegas;
- f. International Hotel, Motel, Restaurant show (1990 – 1998) – an annual hotel, motel and restaurant supply show; and,
- g. Interplan/NeoCon East (1996 to 2000) – an annual contract furniture show in New York City.

(Spalding Affidavit ¶8).

35. In 1996, The Museum Of Modern Art bought twenty (20) reproductions of the tubular Brno chair from Arthur Gordon Associates for use in its "Moving Image Preservation Facility" Hamlin, Pennsylvania. The tubular Brno chair is essentially the same design shape as the flat Brno chair, but with a different frame material. The order was placed by Lewis Alan

Furniture, a New York furniture dealer, who was hired by The Museum Of Modern Art to procure and deliver the chairs to the Museum's facility in Hamlin, Pennsylvania. (Spalding Affidavit ¶12 and **Exhibit 1**).

36. Over the past twenty years, Arthur Gordon Associates has conducted mass media advertising, including monthly advertisements in *Metropolis* magazine from 1999 through early 2004. Arthur Gordon Associates has placed the following representative advertisements:

- a. A full page advertisement displaying an arm chair designed by Mies van der Rohe appearing in the September, 1987 issue of *Interior Design* magazine. Knoll also placed an advertisement in the September, 1987 issue of *Interior Design* magazine;
- b. An advertisement displaying the Barcelona chair and the flat Brno chair for Arthur Gordon Associates' "Warehouse Sale" in the May 2, 1991 *New York Times*;
- c. Full page advertisements displaying the Barcelona chair appearing in the October, 2000 and April, 2001 issues of *Metropolis* magazine; and,
- d. An advertisement displaying the Barcelona chair in the April 28, 2003 issue of *BusinessWeek*.

(Spalding Affidavit ¶13 and **Exhibit 2**).

Knoll's Knowledge That Arthur Gordon Associates Has Sold The Barcelona Chair, Stool, Couch, And Table, And Flat Brno Chair For Many Decades

37. Knoll document Nos. 708469 – 708476 are from a 1976 "Pricing Comparisons" file. Gordon International is one of the companies whose prices are noted in the file. (Bergsman Affidavit, Exhibit 2).

38. In an internal Knoll memorandum dated March 7, 1988, from C.A. Kim to D. Rorke, Executive Vice President of Design for Knoll (subject Mies "Knock-Offs"), C.A. Kim reported the following:

At your request, we have obtained literature from companies that sell so-called "Mies " furniture. Enclosed you will find prices lists and cut sheets for Palazzetti and Stendig International.

We are still waiting for the arrival of information from Brueton and *Gordon International*. (Emphasis added).

(Knoll document 707977, Bergsman Affidavit **Exhibit 2**).

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52. Knoll documents K024617 – K024629 are printouts from Arthur Gordon Associates' website at www.gordoninternational.com on February 18, 2000. The website features the "Barcelona Series" including the Barcelona chair, stool, and table (Knoll documents K024622-23) and the Brno series, including the flat Brno chair (Knoll document K024624-25). (Bergsman Affidavit **Exhibit 3**).

53. Knoll document K024781 is a letter dated August 1, 2002 from Peter Spalding, Vice President of Arthur Gordon Associates. Mr. Spalding writes the following: "We are pleased to provide our latest Buyer's Guide for your reference library." In the letter, Mr. Spalding also identifies additional reference resources identifying the products and services of Arthur Gordon Associates. (Bergsman Affidavit **Exhibit 3**).

54. Knoll documents K024782 – 87 is an excerpt from the Arthur Gordon Associates' June, 2002 Buyer's Guide. The excerpt features the Brno arm chair and Barcelona couch (Knoll document K0245785) and the Barcelona chair, stool, and table (Knoll document K0245786). (Bergsman Affidavit **Exhibit 3**).

55. Knoll documents K024778 – 80 are printouts from Arthur Gordon Associates' website at www.gordoninternational.com on August 16, 2002. The website features the Barcelona chair (Knoll documents K024778 and K024780). (Bergsman Affidavit **Exhibit 3**).

56. Knoll documents K024772 – K024773 is a letter dated Peter Spalding, Vice President of Arthur Gordon Associates to Gordon International clients. In the letter, Mr. Spalding promoted the sale of classic modern furniture by writing the following:

Yet, while change and innovation are critical to the design community, we want to remind you of another great strength. One that built our company over the past thirty years: **Classics!**

Since the classics continue to play a vital role in contract specifications, we would like to offer our thoughts on the benefits GI brings to this arena. **Please consider the points offered on the back of this sheet.** In so doing, we believe that you will find that GI offers the best combination of value, flexibility, availability, and quality in the marketplace today. (Emphasis in the original).

(Bergsman Affidavit **Exhibit 3**)

57. Relying on Knoll, Inc.'s silence and inaction for over twenty years, Arthur Gordon Associates sold, offered to sell, advertised, and distributed the Barcelona style chair, ottoman, couch, and table and the Brno flat chair. (Spalding Affidavit ¶17).

Knoll's Protest Letter In October Of 2004

58. In a letter dated October 25, 2004, to Arthur Gordon Associates from a law firm acting as "intellectual property counsel to Knoll", Knoll demanded that Arthur Gordon Associates "immediately cease and desist from any and all use or sales of the Barcelona Chair, Barcelona Stool, Barcelona Couch, Barcelona Table, Flat Brno Chair, the Brno Counter and Bar Stools, the small square bench, the large square bench, the MVR small rectangular bench and the MVR large rectangular bench or any other furniture item based on or derived from those designs, as well as any and all use of the Barcelona mark." (Knoll documents K025041-53, Bergsman Affidavit **Exhibit 3**).

59. Knoll's October 25, 2004 correspondence to Arthur Gordon Associates (Knoll documents K025041-53) was the first and only time Knoll contacted Arthur Gordon Associates to assert Knoll's exclusive rights to sell the Barcelona Chair, Barcelona Stool, Barcelona Couch, Barcelona Table, Flat Brno Chair. (Spalding Affidavit ¶18).

60. Knoll's October 25, 2004 correspondence to Arthur Gordon Associates (Knoll documents K025041-53) was the first and only time Knoll contacted Arthur Gordon Associates to assert Knoll's exclusive right to use the "Barcelona" mark. (Spalding Affidavit ¶18).

ARTHUR GORDON ASSOCIATES

Date: April 29, 2005

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